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Women and the Law

A Handbook for North Carolina

1993 Edition

School of Law
University of North Carolina at Chapel Hill

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Women and the Law

A Handbook for North Carolina

1993 Edition

School of Law
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WOMEN IN LAW
c/o UNC School of Law
CB #3380
Chapel Hill, N.C. 27599-3380

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PREFACE

In the six years since this handbook's original publication, the law in North Carolina has undergone significant changes. As a result, a revised edition of the handbook, based on law current in March 1993, is being published this year.

Intended to be a "plain English" primer in North Carolina law, this handbook is designed to explain basic legal concepts in simple terms and identify key legal rights. It is not, however, meant to be a legal advisor or to address comprehensively North Carolina law, and it is not a substitute for the advice of an attorney. Rather, we hope this handbook will help readers recognize their most fundamental legal rights and responsibilities and encourage them to seek professional legal help when necessary.

A grant from the Z. Smith Reynolds Foundation made the production of this handbook possible. We are grateful for the Foundation's assistance and thank them for their support. We also thank Professor William Murphy, Todd Lindsley and Ellen Smith of the law school for their advice and encouragement. Finally, we thank the students at the University of North Carolina School of Law who researched and edited the booklet: Ann Weeks, Lori Boutwell, Suzanne Krolikowski, Marilyn Keating, Ruth Ziegler, Julie Joeben, Lisa Samorajczyk, Tracy Myatt, Michele Flowers, Stephanie Pell, Danny Needleman, Christian Heindel, Diane Rolnick, Terry Roth, and Kimberly Sipes. Without their hard work, this revised handbook would not have been possible.

Lisa Fabricant
Allison Smith
Gretchen White

Women In Law
Booklet Committee
1992-93

School of Law
University of North Carolina
at Chapel Hill

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MARRIAGE

REQUIREMENTS

All persons at least 18 years old and older may legally marry in North Carolina. Persons ages 16 and 17 may marry with the consent of either parent or their legal guardian. If a child under 18 marries without consent, the parent or guardian may initiate a court proceeding to annul the marriage. A pregnant girl, or an unmarried girl who has given birth to a child, between ages 12 and 17 may marry with the consent of a parent, legal guardian or the Director of Social Services of the county in which she lives.

N.C.G.S. § 51-2

North Carolina allows first cousins to marry, but persons of closer kin may not. You may marry children of aunts and uncles, but you may not marry your nephew, uncle, brother, stepchild, half-brother, father or grandfather.

N.C.G.S. § 51-4

You must obtain a marriage license from the Register of Deeds (located in the county courthouse) in the county where you are going to marry. A couple wanting to marry may be required to show certified copies of birth certificates or birth registration cards. Since the license expires after 60 days, you must get married within 60 days of receiving your license or obtain a new license. When a couple applies for the license, each person must bring a doctor's certificate which states that he or she is free from venereal disease, tuberculosis, and is mentally sound. The medical exams must have been done within 30 days before applying for the license. If a couple is unable to pay for a medical exam, they may obtain health certificates, without charge, from the local Health Director or County Physician.

N.C.G.S. § 51-8, § 51-9, § 51-11, § 51-16

The marriage ceremony must be performed by either an ordained minister of any religion (a minister authorized by his or her church) or by a magistrate (an officer of the court). Two witnesses must be present. The couple must present their license to the minister or magistrate at the time of the ceremony. After the ceremony the minister or the magistrate will send the marriage certificate to the Register of Deeds. The original of the certificate must be sent, by the minister or officer, within 10 days after the ceremony. The marriage certificate becomes the official record of the ceremony. Procuring a license by false pretenses is a misdemeanor punishable by a $50 fine or imprisonment for 30 days or both.

N.C.G.S. § 51-1, § 51-6, § 51-7, § 51-15

NAME AND NAME CHANGE

In North Carolina a woman has a right to use any name she wants so long as she uses it regularly and does not defraud any one. Thus, a wife is not legally required to use her husband's last name, even on her driver's license, car registration, voter registration or passport. She may keep her maiden name at the time of the marriage and afterwards.

N.C.G.S. § 50-12, § 101-8

If a wife takes her husband's name but later decides to use her maiden name, she must petition the Clerk of Court in the county where she lives for a legal name change. A fee may be involved in changing the name.

If a wife divorces her husband, she may request a name change in the divorce proceeding. She should tell the attorney handling the divorce if she wants to do this.

If a couple wants to use a combined or hyphenated name, the wife may do so at the time of the marriage without a court order. The husband, however, must go to court for a legal name change.

CHILDREN'S NAMES

The child's birth certificate will normally be prepared by the doctor if the birth occurs in a hospital or other medical facility.

N.C.G.S. § 130A-101

In North Carolina legitimate children (those born to a woman who was married at the time of the conception or birth of the child, or anytime in between) usually take the last name of the husband. However, the husband and wife or the wife and the father of the child (if the husband is not the child's father) may agree to any last name they choose. The name of the husband is entered on the birth certificate unless a court has determined that someone else is the father of the child.

If the mother was unmarried at all times from date of conception through the date of birth, the father's name cannot be used on the birth certificate without the written consent, under oath, of both the father and mother. The child's last name shall be determined by the mother. However, if the father's name is placed on the birth certificate, the mother and father shall agree on the child's last name. If there is no such agreement, the child's last name shall be the same as that of the mother.

COMMON LAW MARRIAGE

A common law marriage is a marriage based on an agreement between a man and a woman to consider themselves married and to

Continued

present themselves to others as being married. There is no legal ceremony. Common law marriages are NOT recognized in North Carolina. Only 13 states recognize them. However, if a couple establishes a common law marriage in a state that does recognize it, North Carolina will recognize that marriage if the couple later moves here. Recognition of common law marriage is important in obtaining Social Security and death benefits.

LIVING TOGETHER

Cohabitation (living together without being married) is against the law in North Carolina. This law is rarely enforced. A woman in this situation does not have the same legal rights and protections which a married woman does. For example, she is not entitled to financial support from her partner and cannot inherit from him unless he leaves a legal will providing for her. She cannot claim the benefits or tax advantages available to widows. She loses "homestead rights," which protect certain property from creditors when a woman becomes a widow. She may lose military and/or Social Security benefits. Her children do not have a right to inherit from their deceased father unless there is a will or fatherhood has been established in a court proceeding.

N.C.G.S. § 14-184

In other states women have been awarded financial support from men with whom they have lived. *(Marvin v. Marvin, 557 P.2d 106, Cal. 1976.)* This has never been done in North Carolina, and it is unlikely that the law will change soon.

PRE-NUPTIAL AGREEMENTS

A pre-nuptial agreement is a contract. A contract is a written or spoken agreement between two or more people to do certain things. If one person breaks the contract, the other person may go to court to get the agreement enforced or to receive compensation. To enter a contract you must, under most circumstances, be at least 18 years old and of sound mind.

Two people planning to marry (or persons already married) may make a written contract which states rights each will have to property, earnings and assets which may be or have already been acquired during marriage. For example, you and your fiancee or husband may decide who will have sole ownership of land, cars, stocks, and particular personal possessions. Such an contract is called a pre-nuptial agreement if made before marriage or a post-nuptial agreement if made after marriage. These agreements are valid in North Carolina if they are freely and fairly made. In other words, agreements are valid if no force or

N.C.G.S. § 50-20(d); N.C.G.S. § 52-10; N.C.G.S. § 52-10.1

"tricks" were used to make the agreement. Pre-nuptial and post-nuptial agreements can deal only with property and cannot provide for support of the wife and children in the event of divorce. Courts will ***not*** enforce agreements that concern lifestyles (e.g., household chores, places of residence, sexual matters, or children's educations). To protect yourself, be certain the agreement ***is in writing*** and consult an attorney ***before*** agreeing to ***anything***.

A married woman has the same property rights and obligations that a single woman has. She has the right to own property and to enter into contracts with or without the consent of her husband in most cases. A married woman may establish credit in her own name and have her own bank accounts. (*SEE* Property and Credit sections.)

ESTATE PLANNING

A married person has the right to share in the estate (income and property) of his or her spouse when the spouse dies.

N.C.G.S. § 29

If you are planning to marry, you should consider having a will drawn up by an attorney. If a person does not have a will when he or she dies (called "dying intestate"), North Carolina law determines how the property will be divided and to whom it will go. For example, if a husband dies without a will and has no children, the wife must share the estate with his parents. If the husband dies without a will and the couple has children, the wife must share the estate with the children. If the husband dies without a will and the couple has children under 18, the wife may manage the children's shares but must report to the court how she does so. (*SEE* Intestacy section.)

Young married couples often feel they do not have enough income or property to justify making a will. However, careful planning is even more important in small estates to insure that those you care about will be protected. Wills are generally inexpensive, so shop around for an attorney if you have a tight budget. (*SEE* Wills section.)

SUPPORT DURING MARRIAGE

It used to be the law in North Carolina that only a husband had a duty to support his dependent wife during marriage. This duty of support was, in part, based on the doctrine of necessaries (i.e. if a woman contracted debts for necessary items such as food, housing, clothing or medical care, her husband was obligated to pay the debt if she did not.) In 1987, the North Carolina Supreme Court held that the doctrine of necessaries applies to ***either*** spouse so that both spouses have

Continued

a duty to pay for necessary items for the other. Thus, in the case of hospital expenses, a hospital is entitled to recover medical expenses from either the husband or wife. *(North Carolina Baptist Hospitals, Inc. v. Harris, 319 N.C. 347, 1987.)*

Court orders for support usually arise when the spouses are separated or are seeking a divorce. (*SEE* Divorce section.)

BEING A PARENT

An illegitimate child does not have the same legal rights and protections that a legitimate child has.

A child is ***legitimate*** if it is:

N.C.G.S. § 49-12, ♦ born to a lawfully married husband and wife;

N.C.G.S. ♦ conceived before marriage, but born to parents who eventually marry;

§ 50-11(b), ♦ conceived before but born after its parents' divorce; or

N.C.G.S. ♦ born of a voidable or bigamous marriage.

§ 50-11.1 Otherwise, a child is illegitimate. An illegitimate child may not have the right to claim Social Security benefits based on the father's earnings, to use the father's last name or to inherit property from his or her father's estate. An illegitimate child does have a right to support from the father. A father may voluntarily acknowledge the child as his through a court proceeding or a mother or the state may bring a lawsuit to establish the child's paternity.

An illegitimate child will inherit property from his or her mother (and she from him or her). An illegitimate child may inherit from his or

N.C.G.S. § 29-19 her father if the court has determined who the father is or if the father has acknowledged the child in a writing executed or acknowledged before a certifying officer (who may be a notary public) and filed during the lives of both the father and the child in the superior court clerk's office in the county in which either the father or the child resides.

N.C.G.S. § 14-322.1 It is a felony in North Carolina for a parent willfully to abandon or fail to support a child.

N.C.G.S. § 49-2, Both parents are equally responsible for a child's support. The duty

N.C.G.S. § 49-4; of support usually exists until the child reaches 18.

N.C.G.S. § 48A-2 If a father does not support his children, the mother may sue him,

N.C.G.S. even if he has left North Carolina.

§ 50-13.4 When a child is adopted, he or she has the same legal rights as a natural child, including the right to support and the right to inherit from his or her adoptive parents.

CIVIL ACTIONS IN MARRIAGE

A husband and wife have a cause of action against each other (a legal right to sue) to recover for damages against property or for personal injury caused by the other spouse.

N.C.G.S. § 52-5

Some of the possible legal actions are assault, battery, personal injury caused by the negligence of a spouse, damage to property caused by the negligence of a spouse, or a wrongful death action brought by the estate of the deceased spouse against a spouse who negligently caused the death of the deceased spouse.

CRIMINAL OFFENSES IN MARRIAGE

Married women are responsible for their own crimes and may raise the same defenses as other persons.

Husbands and wives may be found guilty of joint crimes. For example, a woman who helps commit a crime with her husband may be guilty of conspiracy or as an accessory.

Husbands and wives may be charged and found guilty of committing crimes against each other. Married women may have their husbands prosecuted for abuse. Some of the possible charges are assault, battery and criminal trespass. Currently, a husband cannot be charged with marital rape (rape by a husband of his wife) in North Carolina if the husband and wife are not separated. (*SEE* Criminal Law section.)

Other remedies are available under the North Carolina Domestic Violence Act. This law also protects unmarried women against violence from their male roommates. (*SEE* Criminal Law section.)

N.C.G.S. § 50B

DIVORCE

Divorce is a court action which ends a valid marriage and usually requires the help of an attorney. If you cannot afford an attorney, you may seek help through a local Legal Services office, or, in some situations, your spouse may be required to pay your attorney's fees. Before the judge makes the final decision on your divorce, you may go to court and have the judge make temporary decisions on the following:

- custody of children
- possession of the house
- support for spouse and/or children
- visitation rights
- keeping a spouse from harassing the other
- preventing a spouse from disposing of property and assets
- attorneys' fees.

NOTE: You may have a judge make decisions on the above mentioned matters whether or not you are seeking a divorce if you are separated from your spouse. (*SEE* Separation section.)

DIVORCE BASED ON ONE YEAR'S SEPARATION

N.C.G.S. § 50-6; N.C.G.S. § 52-10.2

To obtain a no-fault divorce, or one based on one year's separation, all that is necessary is that the parties live separate and apart for one year. No papers are necessary for a couple to separate legally for the one year period although papers are useful to prove the required period of separation. (*SEE* Separation Agreements and Divorce from Bed and Board.)

It is important that the spouses do not live together during the separation year. Living together stops the clock from running and the couple must begin the year's separation period all over again. The court will look at all of the circumstances of the relationship to decide if the marriage has been resumed voluntarily. Isolated incidents of sexual intercourse will not stop the clock on the separation, but a pattern of such activities might demonstrate to the court that the marriage has been resumed. The couple must also intend to remain separated when the year begins.

A no-fault divorce is based solely on one year's separation. No evidence of fault is necessary. Either spouse may file the suit. It is impossible for one spouse to prevent the other from obtaining a divorce if the parties have lived apart for one year without sexual intercourse and if the wife or husband has lived in North Carolina for at least six months.

At the time of divorce the court can decide matters of alimony, property distribution, child custody and child support. It is important to note that if the matters of alimony and property distribution are not brought up during the divorce proceedings these rights ***will be*** lost to the party entitled to them.

NOTE: Absolute divorce based on insanity is a second type of divorce allowed in North Carolina. The sane spouse may petition the court for divorce upon proof that the parties have been separated for three years due to the incurable insanity of the other spouse. This type of divorce action is not frequently used since the no-fault divorce action requires only separation for one year.

ALIMONY

N.C.G.S. § 50-16.2

Alimony is money paid by the supporting spouse to the dependent spouse. In North Carolina the dependent spouse is no longer presumed to be the wife, so a husband may qualify for alimony as a dependent spouse. Alimony may be ordered at the time of divorce or earlier in the divorce proceedings or in an action for alimony without divorce.

To obtain alimony, the dependent spouse must prove that the supporting spouse is at fault in the divorce and that the dependent spouse is without fault. The fault grounds are:

- adultery
- imprisonment resulting in one-year separation
- unnatural sexual contact
- abandonment
- forcing the dependent spouse out of the house
- cruelty which endangers the life of the dependent spouse
- being a spendthrift
- making life unbearable by indignities
- alcoholism or drug addiction;
- making the dependent spouse's life intolerable because of inadequate support

Adultery of the dependent spouse ***prevents*** an award of alimony, both temporary and permanent.

Alimony automatically ceases if the spouse receiving it remarries or the spouse paying it dies.

The amount of alimony to be paid is determined by the judge. The judge considers the dependent spouse's need, the supporting spouse's means and their previous lifestyle.

N.C.G.S. § 50-16.7

Alimony may be paid by a lump sum, periodic payments or by

Continued

transfers of personal property or possession of real property.

When the court has ordered alimony, the supporting spouse is required to make the payments. If the spouse stops paying, the dependent spouse may go to court to enforce the order. A non-paying spouse may be held in contempt of court and possibly put in jail, or the spouse's wages may be garnished or the personal or real property of the non-paying spouse may be sold in order to satisfy the alimony obligation.

N.C.G.S. § 52A

If the supporting spouse moves out of the state, a suit may be filed in North Carolina through a process called URESA (Uniform Reciprocal Enforcement of Support Act). The county District Attorney's office can help without charge.

N.C.G.S. §50-16.9

Either spouse may go to court to seek an increase or decrease in the payments. The spouse seeking the increase or decrease must show there has been a substantial change in circumstances.

As a practical matter, most divorced women are not awarded alimony and those who do get alimony receive only a small amount. Additionally, alimony orders are hard to enforce. Generally, the women who do receive alimony have been married a long time and have children under 18.

EQUITABLE DISTRIBUTION

N.C.G.S. § 50-20

Equitable distribution is a new right in North Carolina. It sets up a scheme for the courts to divide the marital property of the spouses. Marital property includes all real and personal property acquired by the spouses during the marriage (including pension and retirement benefits). Under the scheme of equitable distribution the parties are allowed to keep their separate property to themselves. Separate property includes real or personal property acquired before marriage or acquired by gift or inheritance during the marriage.

In equitable distribution there is an assumption that the marital property of the couple will be divided equally. However, one spouse may be awarded more than half of the marital property under certain circumstances, including where the spouse is in poor health or has supported the other spouse through college or graduate school.

NOTE: To obtain a division of marital property the parties ***must*** apply for equitable distribution prior to the rendering of the divorce decree or have a valid separation agreement outlining their property rights. Otherwise the rights of a spouse to share in the marital property may be lost.

CUSTODY OF CHILDREN

Parents may agree on who will have custody of the children, or the court will decide. A suit for custody may be filed if the couple is separated, at the time of divorce or later.

Custody is awarded to a parent on the basis of the best interests of the child. In deciding what is in the child's best interest the judge will look at many factors including: the age of the child, the child's sex, the health of the child, the reasons for the parents' divorce, the compatibility of the parent with the child, the ability of a parent to care for the child and the wishes of the child. Either the husband or the wife can be awarded custody; the mother is no longer presumed to be the most suitable person to care for the child. A parent's chances for winning custody of a child are improved if he or she is the primary caretaker of the child.

Many couples may wish to establish joint custody of a child. This does ***not*** mean that the time the child spends with the mother and father is split 50/50. Joint custody merely establishes the legal right of the parent without custody to have a say in decisions concerning the child's health and welfare. Joint custody is ***not*** a good idea unless the parents are on good terms and are likely to remain so.

Visitation rights with respect to the children of divorced or separated parents may be decided by a valid separation agreement, during a hearing for divorce or in a proceeding separate from a divorce proceeding. In nearly all cases the non-custodial parent has a right to visitation with the child which the custodial parent must honor. Visitation rights can be enforced by the courts. In some cases the grandparents of the child have legally enforceable visitation rights.

N.C.G.S. § 50-13.2; N.C.G.S. § 50-13.7

Custody may always be changed by the court. Usually, a parent must show a substantial change in circumstances to obtain a new custody order.

N.C.G.S. § 50A

North Carolina has a law, called the UCCJA (Uniform Child Custody Jurisdiction Act), which is designed to prevent child-snatching and to enforce custody orders when one parent is out of state.

CHILD SUPPORT

Child support may be decided by the parties in a valid separation agreement or may be decided by the court in a separate action for divorce or in a separate court proceeding.

A parent's support obligation may be enforced by civil or criminal proceedings. In a civil proceeding, on request of the parties, the support

Continued

obligation may be ordered to be paid into the court, and the Clerk of Court will then forward it to the parent entitled to receive the payment. Under this system, if a parent fails to send in the support payment, the court will automatically start proceedings to enforce and collect support payments at no cost to the parent having the right to receive the payment.

Failure to pay child support can result in civil imprisonment, sale of the non-paying spouse's property, or garnishment of the spouse's wages. Additionally under new federal laws a non-paying spouse's wages may be automatically garnished if the spouse falls 30 days behind in child support payments.

N.C.G.S. § 50-13.4

URESA may be used to obtain child support from husbands or wives who have left the state.

N.C.G.S. § 52A

It is a felony in North Carolina to abandon or fail to support one's children. A non-supporting parent may face criminal charges and imprisonment of up to 10 years.

N.C.G.S. § 14-322.1

SEPARATION

Before getting a divorce, many couples try a period of separation. Married couples in North Carolina may legally separate at any time. No separation papers are necessary. Separated persons are not free to remarry and are guilty of adultery if they have sexual relations with anyone other than their spouse. This may have important economic consequences if the parties go on to seek a divorce. They may resume the marriage at any time without any legal action.

SEPARATION AGREEMENTS

A separation agreement is a voluntary contract between spouses consenting to live separate and apart from each other. Usually, the separation agreement also settles rights to property, child custody, spousal support and other matters. The contract is binding as to property rights and alimony, but a court may use its own discretion in enforcing or changing provisions for child support and custody.

N.C.G.S. § 52-10.1

To have a valid separation agreement, the couple must be physically separated or separate immediately after signing the contract. Separation agreements entered into after January 1, 1978, must be in writing and notarized (signed by a notary public) or acknowledged before another certifying officer. The certifying officer (including the notary public) may not be a party to the contract.

A separation agreement need not be registered with the court. No spouse should sign a separation agreement written by the other spouse's

attorney ***without getting independent legal advice.*** An attorney will review a separation agreement for a minimal fee.

A separation agreement is voided if the spouses resume cohabitation even though they do not sleep together.

N.C.G.S. § 50-16.6(b)

Spouses may give up their rights to alimony in a separation agreement. This waiver will be enforced, even at the time of divorce, if the party requesting enforcement of the agreement has upheld it.

ANNULMENT

An annulment is a court order that states that a marriage was invalid from the beginning, unlike a divorce which ends a valid marriage. The children born of an annulled marriage are legitimate. The grounds for an annulment must have existed at the time of marriage ceremony.

N.C.G.S. § 51-3

The grounds for an annulment are:

- bigamy;
- impotence;
- lack of consent to the marriage;
- spouses of closer kinship than first cousins;
- one of the spouses under 16;
- no parental consent if age 16 or 17;
- false representation as to pregnancy.

DIVORCE FROM BED AND BOARD

A divorce from bed and board is a court-ordered separation. It is ***not*** a true divorce because the spouses are not free to remarry. A court may order that alimony be paid and may decide child custody and support matters in a divorce from bed and board. The court may also provide for the possession of the marital residence exclusively by one spouse and allow spouses to retrieve and keep separate personal property.

N.C.G.S. § 50-7

The grounds for a divorce from bed and board are:

- abandonment;
- forcing one spouse out of the house;
- cruel treatment which endangers the life of the complaining spouse;
- acts of indignity;
- alcoholism or drug addiction;
- adultery.

The spouse bringing suit must have been a resident of North Carolina for at least six months. There is no requirement that the parties be physically separated at the time the action is filed.

Continued

TAX CONSIDERATIONS

Throughout divorce proceedings tax consequences should be considered particularly in regard to alimony, property settlements, child support, and child exemptions. (*SEE* Tax section.)

Property rights concern ownership, possession, use, enjoyment and disposal of property to the exclusion of others. The two forms of property addressed in this section are real and personal. Real property includes land, buildings, structures attached to the land and improvements to the land. Personal property consists of all other property, including for example, furniture, cars, jewelry, clothes, cash and stock.

N.C.G.S. § 52-1, § 52-4, § 52-11

Property owned by a woman or man before or during marriage does not automatically become the other spouse's property because of the marriage. Property owned by a woman before or during marriage and money earned by her is hers alone. The same is true for her husband. Neither the husband nor the wife is responsible for debts acquired by the other spouse before the marriage. However, a supporting spouse can sometimes be required to provide support to a dependent spouse. A married woman may give or receive gifts of real or personal property to or from her husband or anyone else. Her husband has the same right to give and receive gifts.

RENTAL OF A RESIDENCE

N.C.G.S. §§ 42-38 to 42-44

North Carolina's landlord/tenant law applies to all rented housing, including trailers, houses, apartments and public housing. Transient housing (motels, hotels, shelters) and housing provided without rent or charge do not fall within this category. A landlord-tenant relationship may be established without a written lease if the lease is to be for less than 3 years. However, written leases are required when parties agree to more than a three-year housing term.

Landlords have a legal duty to keep the rental property in a fit and safe condition by:

- complying with the local housing and building codes,
- making repairs promptly
- keeping all halls, sidewalks, stairways safe and
- maintaining all electrical, plumbing, sanitary, heating, air conditioning, ventilation and other facilities, as well as appliances provided, in safe and good working order

Tenants also have responsibilities under the law to:

- pay the rent on time,
- keep the premises clean and safe,
- refrain from deliberately or negligently damaging the property,

Continued

- prevent guests from damaging the property and
- dispose of all garbage and other wastes.

Tenants may not refuse to pay their rent if the landlord does not fulfill his duties unless authorized by court order.

N.C.G.S. §§ 42-50 to 42-56

In addition to rent, most landlords require a security deposit which may be used in the case of nonpayment of rent, damage to the premises, unpaid bills due to the tenants' occupancy of the premises, costs of reletting the property if the tenant breaks the lease, costs of removal and storage of tenant's personal property after the tenant leaves and court costs if the tenant is evicted. Landlords must put all security deposits in a bank trust account or furnish a insurance bond as security, giving the name and address of the bank or insurance company within thirty days. The amount the landlord may charge for a deposit is limited under the law and depends on the nature of the lease.

When the tenancy ends, the landlord must give the tenant a written list of the damages (not including normal wear and tear) and make any refunds to the tenant within thirty days. If the landlord cannot locate the tenant, she must hold the refund for six months. The tenant may sue her landlord for this refund and any attorneys' fees if her landlord refuses to return it.

Landlords may also charge tenants reasonable, nonrefundable pet fees.

N.C.G.S. § 42-37.1

Eviction is the process a landlord uses to remove a tenant from the residence. The landlord may only evict for the following reasons:

- nonpayment of rent
- termination of the lease period
- necessity for major repairs and
- breach of other conditions of the lease.

Eviction proceedings are heard before the magistrate. The tenant has the right to five days' notice of the hearing. Either party may appeal the decision to the District Court. A landlord may not seek to evict a tenant in retaliation for good faith complaints to government agencies about health and/or safety violations, for good faith requests for repairs or for exercising any other rights under the lease or applicable law.

Tenants may organize to enforce their rights.

LAND OWNERSHIP

N.C.G.S. § 39-13.6

Land may be owned individually or jointly with one or more persons. If the ownership is joint, it is usually either a tenancy in common or a tenancy by the entirety. *(Branch Banking and Trust Co. v. Wright, 74 N.C.App. 550, 552, 1982.)*

Tenancy by the entirety is a form of real estate ownership by husband and wife in which they both hold the title to the property. This type of tenancy is formed when property is given or sold to a married couple unless it is otherwise specified. In a tenancy by the entirety, if one spouse dies, the other automatically owns the entire property. It does not pass through the estate. Neither spouse may sell or give away the property without the other's consent. The creditors of each spouse may not make a claim to the property during the marriage. However, if both spouses have signed a note, their creditors may make a claim to the property. When spouses are tenants by the entirety, both husband and wife are entitled to possession, control and use of the land, as well as any rents and profits. A tenancy by the entirety may be ended only by the death of either spouse, an agreement between the spouses or divorce.

If a couple divorces, the tenancy by the entirety is automatically converted into a tenancy in common. A tenancy in common is a form of real property ownership in which each spouse owns one half of the property but the property itself is still whole. When one spouse dies, her share in the tenancy passes with her estate instead of going to her spouse automatically. Under a tenancy in common, either owner can sue to divide the property physically into halves. If the court cannot divide the property, it will order the sale of the property. The money received from the sale will then be divided between the husband and wife. Physical division may be delayed by court order because of the need for a home for the minor children.

TRANSFERS UPON DEATH

A person's estate includes all property she holds at her death. Generally, an individual writes a will to designate how she wants her estate divided. Writing a will may be complicated and should be done with an attorney's supervision. After a will is written, it should occasionally be reviewed - especially after marriages, births, adoptions, deaths or divorces.

When a person dies without a valid will, she is said to die "intestate." The state's "intestacy" laws determine who receives her property once debts and taxes are paid.

Certain types of property cannot be distributed under a will or the intestacy laws. For example, if an individual holds life insurance policies, annuities and retirement benefits payable to designated beneficiaries, these pass directly to the designated beneficiaries at the person's death.

Continued

Sometimes real property or bank accounts are held jointly by two or more persons with a right of survivorship. This means that, when one owner dies, her share of the property is automatically given to the surviving owner or owners.

WILLS

A will is a written document that sets forth how an estate is to be distributed. It may also designate an executor (personal representative who makes sure the expenses of the estate are paid and distributes the estate property). The testator (person making the will) may also name a guardian for her minor children in her will.

N.C.G.S. §§ 31-3.1 to 31-3.3; N.C.G.S. § 31-1

In North Carolina, an individual must be at least eighteen years of age and of sound mind to make a will. Generally, the will must be written and signed by the testator and two persons must witness the testator sign the will and sign their names in the testator's presence. A person who is a beneficiary (one who will receive property under the will) should not be a witness. These requirements may vary from state to state. If the testator moves from North Carolina, she should make sure her will is considered valid in her new state.

N.C.G.S. §§ 31-5.1 to 31-5.7

Once a will is made, it remains in effect unless the testator revokes it in a lawful manner. Revocation can be done by making a new will that specifically revokes any earlier wills or by adding a codicil (an amendment to the will) that only voids certain parts of the will. The testator may also revoke her will by intentionally destroying it with the purpose of voiding it. This method has drawbacks, however, because it may be difficult to prove later the intent to revoke the will. In addition, when a person gets divorced, provisions in her will for her former spouse are automatically revoked, unless the will states otherwise.

N.C.G.S. §§ 30-1 to 30-3

Typically, people may dispose of property in a will however they choose, but there are some exceptions. For instance, if a testator leaves a major portion of his estate to someone other than his wife, she may be able to "dissent" from the will. This means she will not take the share the will provides for her and will instead take a share specified by law. This share is usually equal to the amount she would take under the intestacy laws. Under North Carolina's intestacy laws, if the testator has no living children, descendants, or parents, his spouse can receive all her late husband's estate. If the testator has living children or descendants from a previous marriage, his spouse may only receive one half of the estate. A spouse must file her dissent with the superior court within a certain period of time.

Parents may disinherit their children by leaving all of their property

N.C.G.S. § 31-5.5 to others in a will. However, if the testator unintentionally omits a child from the will, the child may be entitled to his share of the testator's estate. When a child is born to or adopted by a testator ***after*** her will has already been made, the child may claim a share of the estate as if the testator had died without a will, unless the will provides for the child or states that the child was intentionally omitted.

INTESTACY

When a person dies without a will, the state's intestacy laws determine who receives property from his estate and the size of each recipient's share. These laws also apply to any property not distributed by a will.

N.C.G.S. §§ 29-1 to 29-29

Under North Carolina's intestacy laws, the surviving spouse is usually preferred. When a person dies, his spouse is entitled to the entire estate if the decedent has no living children or other descendants and no living parents. When children or other descendants also survive, the spouse will share the estate with them but is entitled to the first $15,000 of personal property. If one child outlives the decedent, the spouse receives one half of the estate. When two or more children survive, the spouse receives one third of the estate. If there are no living children or other descendants but one or both of the decedent's parents are alive, the spouse will share the estate with the parents but is entitled to the first $25,000 of personal property. When a person dies without a living spouse but is survived by children or other descendants, they will inherit the estate. In other cases, more distant relatives may inherit.

North Carolina law provides a surviving spouse other alternatives to the share provided by the intestacy laws. One option is for the widow to take a life interest (possession for her life only) in one third of all the real property owned by her late spouse. The widow may claim a life interest in her home if it was owned by the decedent and absolute ownership of its furnishings. This alternative is not available to a surviving spouse who has given up the right to it in a valid contract (such as a prenuptial agreement), and it does not apply to real property sold or given to others under a deed signed by both husband and wife. Often, widows choose this option when the estate is bankrupt or very small. It must be claimed by filing a notice of election with the Clerk of Superior Court.

N.C.G.S. § 29-30

PROBATE AND ADMINISTRATION

N.C.G.S. Chapters 31, 28A

The court-supervised process by which the property of a person passes under a will or under the intestacy laws is called administration.

Continued

Probate is the process of proving the validity of a will and is the first step in the administration of an estate. However, the word "probate" is commonly used to describe the entire process by which a will is validated and an estate administered.

Whether a person dies with or without a will, the court must approve the personal representative who administers the estate and oversees the winding up of the decedent's affairs. If the decedent left a will, the person named as executor should apply to be the personal representative. If there is no will, a personal representative must be appointed. In North Carolina, the surviving spouse has first priority.

Once approved, the personal representative must prepare an inventory and appraisal of the decedent's property, ascertain what debts the decedent owed and pay them, prepare and file tax returns for the estate, manage the property of the estate during administration, and distribute the property remaining at the end of the administration period. The personal representative must report her actions in administering the estate to the court.

N.C.G.S. §§ 30-15 to 30-33

To provide for a surviving spouse during administration of an estate, North Carolina law gives the spouse the right to an allowance for support for one year after the death of her spouse. Children of the deceased spouse who are under age 18 (and certain other children under age 22) are also entitled to an allowance for one-year's support. These allowances are made out of the decedent's personal property. The spouse may receive a minimum allowance of $5,000 and each child is entitled to at least $1,000. The minimum allowances may be claimed by applying to the personal representative of the estate or a magistrate. If the estate is solvent, the surviving spouse and children may claim larger allowances.

The allowance for support provides some protection to a surviving spouse and children from the decedent's creditors. In addition, some of the decedent's property may be exempt from creditors' claims. North Carolina law gives residents the right to claim such an exemption for certain property, including

- up to $10,000 for property used as his or her residence;
- up to $3,500 less the amount of the residence exemption, for any property;
- up to $1,300 for a motor vehicle; and
- up to $3,500 plus $750 for each dependent (but no more than $3,000 for all dependents) in furnishings and similar property held for personal, family or household use.

N.C.G.S. §§ 28A-25-1 to 28A-25-6

North Carolina law provides a simple procedure for settling the estate of individuals who left no will and whose personal property is worth less than $10,000. This procedure is also available for the estate of an individual who dies leaving a will and whose real and personal property is worth less than $10,000. In these cases, a person entitled to property in the estate or a creditor of the decedent is authorized to collect the decedent's property upon filing with the superior court. Creditors' claims will be handled first. A final affidavit must then be filed with the court reporting the manner in which the property has been distributed.

Signing one's name is a significant power. Whenever you are considering a transaction that requires your signature, be sure:

- you understand what you are signing;
- you are not rushed;
- you ask questions;
- you never sign anything with blanks;
- you know the total cost;
- you get a copy of what you are signing.

CREDIT

Credit is the privilege of using money, goods, or services before you pay for them. A creditor grants a "credit-worthy" applicant the right to defer payment for money lent or goods and services purchased until a later agreed-upon date. "Credit-worthiness" is determined by the applicant's ability to repay, past credit history, size of the applicant's income, and other debts and assets.

The credit laws do not guarantee that a woman will receive credit. They only govern the transactions involved in seeking and granting credit.

State Laws

Under North Carolina law, a married woman or unmarried woman may not be denied credit if a man in the same economic situation would not be denied. A creditor is not allowed to give a preference to any applicant on the basis of sex or marital status.

N.C.G.S. § 25B

You may request a credit reporting agency to report your separate credit history as well as your history with your husband.

You have the right to sue a creditor who denies you credit solely on the basis of your sex.

Federal Laws

Under the 1974 Equal Credit Opportunity Act (ECOA), it is unlawful for a creditor to discriminate on the basis of sex or marital status (or race, color, religion, national origin, age, receipt of public assistance) in regard to any aspect of a credit transaction.

15 U.S.C. § 1691

In the application stage, a creditor may not:

- make statements that would discourage an applicant;
- request a courtesy title (Mrs., Miss, Ms.) unless the application discloses that this request is optional;

- ask marital status if credit requested is for a separate, unsecured loan;
- ask about the present or previous spouse unless that spouse will use the account or that spouse's income will be used to repay the loan;
- ask about alimony or child support unless the creditor states that the applicant does not have to disclose receiving such payments;
- refuse to extend credit in a woman's maiden name or a combined or hyphenated name;
- ask the woman about child-bearing intentions or birth control practices.

In evaluating an application, a creditor may not:

- refuse to grant a separate loan to a woman because of sex or marital status;
- discount a woman's income;
- refuse to grant a woman credit because there is not a cosignor, where it is a separate loan and the woman is credit-worthy;
- refuse to grant credit because the telephone is not listed in the applicant's name;
- refuse to consider alimony and child support as income if they are likely to be regular.

In notifying the applicant of the grant or denial of credit, the creditor must:

- notify within 30 days;
- give written, specific reasons for denial or
- state that the applicant has the right to receive such written reasons.

A suit under ECOA must be filed within two years of the violation. Remedies include actual damages, punitive damages up to $10,000 and attorney's fees.

15 U.S.C. § 1681

The Fair Credit Reporting Act (FCRA) requires that creditors report all accounts used by both spouses in both spouses' names. If you change your name or marital status, you cannot be required to fill out a new credit application. Creditors may not close your account if you marry or divorce. However, if you divorce and the credit was based on your husband's income alone, you may be asked to reapply.

Under FCRA you have a right to obtain information regarding denial of credit. You are entitled to:

- get the name and address of the credit bureau giving the unfavorable report;
- get the contents of the file (with a few exceptions) at no charge if the

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request is within 30 days of the denial;

- require the bureau to reinvestigate;
- include a statement in your file explaining your side of any unfavorable entries and have the statement furnished to creditors.

Adverse credit information must be removed from your file within seven years, unless the information is about bankruptcy, in which case it may remain for ten years.

Financing a Home

42 U.S.C. § 3605

The Fair Housing Act (FHA) prohibits a home mortgage lender from denying or discriminating in any terms of a loan on the basis of sex. The Act does not outlaw discrimination on the basis of marital status. FHA also outlaws discrimination in the rental of public or private housing. Remedies for violations of the Act include injunctive relief, actual damages, punitive damages, and attorney's fees.

BANKRUPTCY

U.S.C. Title 11

The Bankruptcy Act is a federal law to help persons who cannot pay their debts. Bankruptcy proceedings may be either voluntary or involuntary. If the proceeding is voluntary, the debtor or individual takes the burden of seeking relief from the court. If creditors begin the proceeding, it is involuntary. The following information will concern only voluntary bankruptcy.

The Bankruptcy Act provides two types of proceedings for individual debtors. One is a liquidation process whereby all non-exempt assets are collected, sold, and the proceeds are distributed among the creditors. The Act allows the debtor to keep or "exempt" some property from the reach of creditors. Examples of property that may be exempted include household goods, jewelry, professional tools, a motor vehicle, and some interest in real property.

The other proceeding is the Chapter 13 adjustment for individuals with a regular income. With regular income, a debtor is eligible to devise a plan which provides for the payment of all or a portion of the debts over a specified time. Such plan is subject to approval by the bankruptcy court. It must accomplish such payment within three to five years. An individual may convert to the liquidation method at any time during a Chapter 13 proceeding.

Procedure

Bankruptcy proceedings are initiated by the filing of a petition by the debtor and payment of a $120 fee. Payment of the fee is required,

but it may be paid in installments. Married couples may file "joint" bankruptcy. This usually occurs when the spouses are both liable on the debts, and they own most of their property together.

The filing of a petition with the bankruptcy court automatically stops all collection efforts and lawsuits by creditors.

Under the liquidation proceeding, a trustee will be selected to collect all of your assets for distribution to creditors. With the Chapter 13 option, a debtor retains possession of all real and personal property and makes payment to the creditors on a monthly basis, either by sending payment directly to the creditors or by having a trustee do it.

Effect on Credit

The fact of bankruptcy will remain part of your credit history for 10 years. If you did not file bankruptcy jointly with your spouse, and you apply for a separate, unsecured loan, a creditor may not consider your spouse's bankruptcy.

INSURANCE

N.C.G.S. § 58

The sale of all insurance in North Carolina is regulated by the North Carolina Insurance Commissioner. Unfair discrimination by insurance companies, agents, and brokers is illegal in North Carolina. Insurance companies, however, may seek to charge more to cover a woman for some types of insurance. The rationale behind this is that women as a group live longer than men and thus cost more to insure. Such practice is not discriminatory as long as the rates reflect the differences in cost with reasonable accuracy.

N.C.G.S. § 20-310

In regard to motor vehicle insurance, no policy may be cancelled solely because of age, sex, marital status, race or because some other company cancelled the policy. Policies may be cancelled for failure to pay premiums or for certain criminal violations regarding motor vehicle use.

If you are denied insurance or think you are quoted an unfair rate for insurance, ask the insurance agent for the reason and source of the decision. The address to register complaints with the North Carolina Insurance Commissioner is:

North Carolina Department of Insurance
Consumer Services Division
P.O. Box 26387
Raleigh, N.C. 27611
(919) 733-7343

FEDERAL INCOME TAX

Every citizen and resident alien who has a gross income above a certain level must pay a portion of that income in federal taxes. If a citizen or resident alien's income is below this level, he or she does not have to pay income tax and is not required to file a tax return.

To determine whether or not you must pay income tax, you should read the instructions provided by the Internal Revenue Service (IRS). You can obtain tax return forms and instructions at your local library or post office. There are three different tax return forms: Form 1040EZ, Form 1040A, and Form 1040. Read the instructions to determine which form you should use. If the instructions do not answer your questions, there are toll-free tax help telephone numbers in the instruction booklet.

Even if you are not required to file a tax return, you may nevertheless want to file one if you are entitled to a refund of withheld tax or if you can take the earned income credit.

What income is taxable?

Not all income is taxable, because the laws allow you to deduct and exempt certain amounts. Your "gross income" is the total amount of all income that you received (in the form of money, goods, property and services) that is not exempt from tax and must be reported. The tax instruction book gives examples of income that you must report and of income that you do not report. After you calculate your gross income by adding all reportable income, you subtract any deductions that you are allowed in order to determine your taxable income.

What is "itemizing"?

When you calculate your tax liability, you can either take the "standard deduction" or "itemized deductions." When you itemize, you list separately all the expenses that the IRS allows you to deduct from your income. Your tax will be less if you choose to take the larger of these two deductions.

To figure your itemized deductions, you should fill in Schedule A to Form 1040. The instructions to Schedule A list the expenses that are deductible. Among other things, Schedule A permits you to deduct certain medical and dental expenses if you were not reimbursed, certain taxes, home mortgage interest, and gifts to charity.

What is a "credit"?

A tax credit is something that you get to subtract from the tax you owe. For example, if you paid someone to take care of your child while you worked or looked for work, then you may be able to take the Credit for Child Care Expenses. The instructions have a description of each credit and tell you who can take the credit.

If you had a child living with you, you should read the instructions for Schedule EIC (Earned Income Credit) to Form 1040. You can get a refund of the credit even if you do not owe any taxes.

Withholding.

If you worked for an employer, you should have filled out a W-4 form when you were hired. This form tells your employer how much money to withhold from your paycheck.

In January, you should receive a form telling you how much money you earned and how much tax was withheld. If the amount withheld from your paycheck was more than what you owe, you can get a refund. If the amount withheld was not as much as the amount you owe, you must pay the difference.

Should my spouse and I file a joint return?

If you are married, you may choose to file jointly with your spouse or separately. Check the tax tables to determine how much you would have to pay under each category.

Are alimony payments, child support and property settlements taxable income?

The general rule is that alimony is counted as part of the income of the spouse that receives it, and it is deductible from the income of the paying spouse. Child support payments and property settlements are not included in the taxable income of the receiving spouse and cannot be deducted by the paying spouse.

The IRS has specific rules which define alimony, and you should read the instructions to determine if your payments qualify as alimony under its rules. The terms of the separation or divorce agreement may prevent part of a payment from qualifying as alimony. For example, if the agreement includes a reduction in alimony which takes effect when a particular event in the life of a child occurs (child turns 18, graduates from high school, etc.), then the amount of the reduction will be considered to be child support for tax purposes.

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The ability to deduct alimony from income and thereby reduce the amount of federal income tax owed helps keep payments coming to the receiving spouse. Therefore, it is very important that arrangements for alimony be in writing and that the tax consequences be discussed ahead of time with an attorney or accountant to avoid problems later on. The IRS may compare the tax return filed by the receiving spouse to that filed by the paying spouse to make sure they both report the payments correctly.

Recordkeeping.

The IRS requires taxpayers to keep records of tax returns for at least three years. You should keep copies of the completed forms, check stubs, medical receipts, and any other records related to your tax return.

When to file.

You should file your return by April 15. If you intend to file late, you should request an extension before April 15. Even if you get an extension, you must pay your taxes by April 15, or you may have to pay penalties and interest.

NORTH CAROLINA INDIVIDUAL INCOME TAX

N.C.G.S. Ch. 105, Art. 4, Schedule D

North Carolina's individual income tax laws are found in Chapter 105, Article 4, Schedule D, Division II of the North Carolina General Statutes. Every resident and part-year resident of North Carolina and every non-resident who receives income from North Carolina sources must file a North Carolina income tax return if his or her gross income exceeds a certain amount. You should read the "Individual Income Tax Instructions For Form D-400" to determine whether or not you must file a return. The forms and instructions should be available at your local library. If the instructions do not answer your questions, there are telephone numbers for income tax information and assistance in the instruction booklet.

You must complete your federal income tax return before beginning your North Carolina income tax return because the taxable income from your federal return is the starting point for preparing your North Carolina return. You will then adjust this amount by following the North Carolina instructions for additions and deductions. Once you have calculated your North Carolina taxable income, you will figure your tax. You should then read the information in the instructions about tax credits to see if you are entitled to reduce the amount that you owe.

Recordkeeping.

North Carolina law requires you to keep canceled checks, receipts, and other evidence to prove any amount entered on your tax return for at least three years. You must keep your canceled check, money order stub, or departmental receipt showing payment of tax for at least five years from the due date of the tax return.

When to file.

If you file your tax return on a calendar year basis, it is due on or before April 15 of the following year (for example, your 1992 return is due by April 15, 1993).

NORTH CAROLINA PROPERTY TAX

N.C.G.S. Ch. 105, Art. 12

North Carolina's property tax laws are found in Chapter 105, Article 12 of the North Carolina General Statutes. Some time between January 1 and January 31 of each year, you must file a list of the property that you own. You should contact the tax supervisor in your county to find out where you are supposed to go to list your property. If you do not file by January 31, you will be charged a penalty.

All real and personal property within the state of North Carolina is subject to taxation unless it is excluded or exempted. The legislature changes these laws periodically, so you should consult the statutes if you want to find out what property is exempt or excluded from taxation. Among other things, the law as of 1992 excludes nonbusiness personal property (furniture, clothes, etc.) from taxation, but cars are subject to taxation. Your real estate (home and land) is subject to taxation also. The value of your real estate for tax purposes is based on an appraisal conducted by the county every eight years. North Carolina residents who are, as of January 1, (1) 65 or older or (2) totally and permanently disabled, can avoid property tax on the first $12,000 of real property, or a mobile home used as a residence, if they apply for the exclusion and their disposable income for the preceding year did not exceed $11,000.

Several months after you list your property, you should receive a property tax bill in the mail. The amount of your tax is calculated from the value of your taxable property. The tax rate differs from county to county, and you should contact the tax supervisor for your county if you want to know the rate in your county. The tax is due by September 1, but you will not be penalized for late payment unless you wait to pay it until after January 6. If you fail to pay by January 6, you will be charged interest.

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NORTH CAROLINA INTANGIBLE PERSONAL PROPERTY TAX

N.C.G.S. Ch. 105, Art. 7, Schedule H

North Carolina's intangible personal property tax laws are found in Chapter 105, Article 7, Schedule H of the North Carolina General Statutes. North Carolina residents owning shares of stock, bonds, notes and/or other intangible personal property are required to file an intangibles tax return (Form H-801) on or before April 15, provided the taxable value exceeds a certain amount (for 1992 tax returns, the amount was $6,000, but this is subject to change each year). If your total tax due does not exceed $15.00, then you do not need to file the return.

ESTATE AND INHERITANCE TAXES

Federal Estate Tax

When a person dies, a new taxable entity, the "estate", is created. In general, the estate will be subject to the federal estate tax if the value of the estate exceeds $600,000. It is up to the executor or administrator to determine the value of the estate and see that the tax due is paid. There are detailed rules about what things are included in the value of the estate and what deductions are permitted. The tax return and taxes due should be paid to the IRS within nine months of the date of the death. Estate tax is a very complicated area of the law, and it is recommended that you seek professional help - an attorney or an accountant - to help you settle these matters.

North Carolina Inheritance Tax

N.C.G.S. Ch. 105, Art. 1, Schedule A

North Carolina's inheritance tax laws are found in Chapter 105, Article 1, Schedule A of the North Carolina General Statutes. In North Carolina, when someone dies or leaves possessions to someone by a will, or when a person is designated by the state to receive possessions from a person who died without a will, the state taxes the amount that is transferred. However, certain transfers are not subject to the inheritance tax, and sometimes an inheritance tax credit is available. The inheritance tax is not a tax upon property in the estate itself, but it is a tax imposed on the privilege to succeed to property upon the death of the former owner and is deducted from the legacy or share in the distribution.

The estate may include real property (such as a home, land, a farm, or an apartment building) and personal property (such as cars, household goods, furniture, jewelry, clothes, money or farming equipment). Corporate stocks and bonds and proceeds from life insurance policies and annuities are also included in the estate. The amount of tax due is

based on the value of the property received and the category or class to which the beneficiary belongs. Your attorney or accountant will tell you to which class you belong. The administrator or executor must file the inheritance tax return with the Secretary of Revenue in Raleigh and pay the tax due within nine months of the date of the death.

If your spouse dies and the checking accounts, savings accounts, and safe deposit box are in his or her name, or are in both of your names, the funds will be frozen until the Secretary of Revenue is assured that there will be enough money to pay the taxes. However, if the total amount in all of the accounts and safe deposit boxes is two thousand dollars ($2000) or less, the Clerk of Superior Court of your county may authorize the bank in writing to transfer the funds or property to a representative of the estate when these funds comprise the total cash assets of the estate.

If your spouse dies and you are named the beneficiary of your spouse's life insurance policy, the insurance company can pay the proceeds of the policy to you when your spouse dies. The company will notify the Secretary of Revenue of the amount of the policy payment, and this amount will be included in the estate.

North Carolina Estate Tax.

N.C.G.S. § 105-7

In addition to an inheritance tax, North Carolina law imposes a tax upon the transfer of the ***net*** estate (amount after deductions) of every decedent, whether the decedent is a resident or non-resident of this state, when the inheritance tax imposed on the estate is less than the maximum state death tax credit tax allowed by the Federal Estate Tax Act (North Carolina General Statute section 105-7). Your accountant or attorney will advise you on the amount of credit you will receive so that you can determine the inheritance and estate tax obligations to North Carolina.

GIFT TAX

N.C.G.S. Ch. 105, Art. 6, Schedule G

North Carolina's gift tax laws are found in Chapter 105, Article 6, Schedule G of the North Carolina General Statutes. When you give property away, you may be required to pay a gift tax. Gifts worth over $10,000 in one year to any one person are taxable. You may make gifts of $10,000 or less in any one year to as many people as you like without paying any taxes. Once the total amount given to one person exceeds the $10,000 limit in one year, you must report the gift. In most cases, the person who makes the gift, not the recipient of the gift, pays the tax.

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By April 15 of the year following the year in which the gifts were made, you must file both a federal (Form 709, U.S. Gift Tax return) and a North Carolina gift tax return and pay any tax due. There are certain deductions and exemptions which will lower the amount of tax you owe and not all gifts are taxed, so read the instructions carefully.

SEX DISCRIMINATION

STATE LAWS

North Carolina has an Equal Employment Practices Act, which makes discrimination on the basis of sex against the public policy of the state. However, this act does ***not*** prohibit discrimination. Instead, the Human Relations Commission of the North Carolina Department of Administration will investigate claims of discrimination. The Commission has no power to enforce its findings, but it does have authority to work out a settlement between the parties.

SEX DISCRIMINATION

FEDERAL LAWS

Three federal laws make discrimination on the basis of sex illegal. They are Title VII of the Civil Rights Act of 1964, as amended and expanded by the Civil Rights Act of 1991, the Equal Pay Act of 1963, and Executive Order 11246, as amended by Executive Orders 11375 and 12086.

Title VII of the Civil Rights Act of 1964

Title VII prohibits discrimination against any person on the basis of race, color, sex, religion, or national origin as to any condition of employment. You will be protected under Title VII if you work for or seek a job from:

- private employers who employ 15 or more persons;
- state and local governments;
- private and public educational institutions;
- employment agencies;
- labor unions; or
- certain federal employers.

Title VII aims to abolish discrimination in all aspects of employment, not just in hiring and firing. Therefore, an employer may NOT:

- refuse to hire married women yet hire married men;
- use ads or employment notices that indicate that males are preferred for a job;
- pay different wages for equal work (including vacation, overtime, and benefits);
- use applications that discriminate against women;

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- restrict the working hours and conditions of women but not of men;
- discharge, transfer, advance, promote, lay off, or recall in a way that discriminates against women;
- use separate seniority lists for women and men;
- discriminate against women in pension plans;
- discriminate against women in testing programs;
- use different retirement policies for men and women;
- use training or apprenticeship programs that treat women differently than men;
- discriminate against women in health insurance programs (including life, accident, and medical insurance);
- sexually harass women employees
- retaliate against any employee who reports a violation or otherwise assists in enforcement of this law.

Labor unions may not exclude women, refuse to process women's complaints, or negotiate employment contracts which discriminate against women. Employment agencies may not advertise a job for males only, classify jobs by sex, or assist an employer who discriminates against women.

Charges of sexual discrimination under Title VII may be made on one of two basic theories: disparate treatment or disparate impact. The Civil Rights Act of 1991 has amended Title VII so that employees may seek compensatory and punitive damages for disparate treatment discriminatory actions. These are actions that are intentional on the part of the employer or that facially discriminate against protected groups. Disparate impact discrimination occurs when policies appear to be neutral on their face but have a demonstrably negative effect on one of the groups that are protected by Title VII.

An exception to Title VII allows discrimination on the basis of sex when an employer can show that gender is a "bona fide occupational qualification" (BFOQ). This exception is quite narrow and means that a person's sex must be directly related to the performance of that particular job.

If you believe that you have been discriminated against in violation of Title VII, contact the Equal Employment Opportunity Commission (EEOC) immediately. Charges must be filed with the EEOC within 180 days of the alleged violation, and the EEOC will then investigate the alleged violation.

Equal Pay Act of 1963

The Equal Pay Act prohibits differences in pay based on sex. It

covers employers who must comply with the federal minimum wage law. The Act requires employers to pay equal salaries to men and women if their jobs:

- involve similar tasks (the tasks do not have to be identical); and
- require substantially equal skill, effort, and responsibility; and
- are performed under similar working conditions; and
- are performed in the same place of business.

"Salary" includes not only actual pay but also overtime pay, travel expenses, pension plans, health care expenses, retirement programs, paid vacations, and uniform costs.

According to the Equal Pay Act, an employer may not reduce the wages of any employee to comply with the law but must raise the wages of the underpaid person. Labor unions are also prohibited from causing or attempting to cause an employer to violate the act.

There are four exceptions to the Act. Different salaries for men and women do ***not*** violate the Act if they are based on:

1) a merit system;
2) a seniority system;
3) a system that measures earnings by quality or quantity of production; or
4) any factor other than sex.

Enforcement of Title VII and the Equal Pay Act

If you think that an employer has discriminated against you in any aspect of employment, you must file a complaint with the Equal Employment Opportunity Commission (EEOC). (The offices are listed below). Complaints should be filed as soon as there is evidence of discrimination. A Title VII claim must be filed within 180 days of the discriminatory act. The EEOC will investigate the charge and attempt to settle the problem with your employer. If an acceptable agreement cannot be reached, the EEOC may bring a lawsuit on your behalf. Because of the large backlog of cases, there may be a long wait before you get relief. Thus, Title VII and the Equal Pay Act allow private suits in court against employers. You ***must*** file your claim with the EEOC before you can go to court. If you are successful, the court may order the employer to pay your attorney's fees, court costs, and up to two years back wages. The court may also order that you be reinstated. In the case of intentional (disparate treatment) discrimination, the Civil Rights Act of 1991 has amended Title VII to provide for compensatory and punitive damages to complaining employees.

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Harassment by an employer in response to your filing a complaint or participating in an investigation is also a violation of Title VII.

Equal Employment Opportunity Commission (EEOC) Offices:

- 5500 Central Avenue, Charlotte, NC 28212, (704) 567-7100
- 1309 Annapolis Drive, Raleigh, NC 27608-2129, (919) 856-4064
- 801 Summit Avenue, Greensboro, NC 27405-7813, (919) 333-5174

Executive Order 11246, Amended by 11375 and 12086

An executive order is issued by the President of the United States. Executive Order 11246 forbids discrimination on the basis of sex, race, religion, or national origin by certain employers doing business with the federal government. All contractors with $10,000.00 or more business with the federal government are required to comply. Contractors with 50 or more employees and at least $50,000.00 of business with the federal government are required to develop written affirmative action plans with specific goals and timetables for increasing the levels of "underutilized" workers, or those who are employed at levels below those that would reasonably be expected by their availability.

If a contractor fails to comply, the contract may be cancelled and future contracts may be forfeited. Enforcement is through the Federal Contract Compliance Office of the United States Department of Labor. Complaints must be filed within 180 days of the discrimination. Individuals with complaints may file a charge by sending a letter to the Office of Federal Contract Compliance, U.S. Department of Labor.

Office of Federal Contract Compliance, U.S. Department of Labor Offices

Main Federal Office:
200 Constitution Avenue, N.W., Room C 3325
Washington, D.C. 20210; (202) 523-9475

Charlotte office: Mart Office Building, Room BB41,
800 Briar Creek Road, Charlotte, N.C. 28205;
(704) 344-6113

Raleigh office: Century Post Office Building,
Suite 121, 300 Fayetteville Street Mall,
Raleigh, N.C. 27601; (919) 856-4058.

SEXUAL HARASSMENT

Unwelcome sexual advances or harassment, either verbal or physical, against a female employee are violations of Title VII and will create liability through that statute and the Civil Rights Act of 1991.

Two main types of sexual harassment have been recognized by the EEOC and federal courts. The first is "Quid Pro Quo" harassment, which occurs when tangible benefits are made conditional on the granting of sexual favors by the employee, or when an employee is punished for refusing to engage in requested sexual behavior. This type of harassment is necessarily done by an employee's supervisors or persons with power over the harassed employee. Since such employees are deemed to be agents of the employer, employers are deemed to have constructive knowledge of the behavior and thus may be held liable for it.

The second type of sexual harassment is "hostile environment" sexual harassment. This can be any type of behavior that is directed at one gender, including but not limited to verbal or physical conduct of a sexual nature, graffiti, sexually suggestive photographs, or jokes. The conduct must be "unwelcome," and must unreasonably interfere with an individual's work or create an intimidating, hostile, or offensive working environment. Voluntary participation by the harassed person in the harassing behavior does not necessarily show that the employer's conduct was "welcome." Employers may or may not be held liable for hostile environment sexual harassment. Factors which may affect the employer's liability include the employer's knowledge of the behavior, whether the culprit is a supervisory employee or a co-worker, and how closely related the behavior was to employment conditions. Additionally, employers may be able to escape liability after the incident by responding immediately and effectively when made aware of the problem.

When working conditions are so unbearable that a reasonable person would feel compelled to resign to avoid further exposure to sexual harassment, the resignation is called a "constructive discharge." An employee who successfully argues that she has been constructively discharged is awarded reinstatement, back pay with interest, damages, and attorneys' fees.

PREGNANCY

Title VII prohibits discrimination in employment on the basis of pregnancy, childbirth, or related conditions. An employer may not fire, refuse to hire, or refuse to promote a woman because she is pregnant. The general rule is that pregnant women must be treated the same as all

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other temporarily disabled applicants and employees. Employers may not exclude fertile women from jobs on the grounds that those jobs might cause harm to a potential fetus.

An employer who chooses to provide a health care benefits plan must make sure that the plan includes pregnancy and childbirth and that the pregnancy and childbirth coverage provided is not less than that for similar conditions. For instance, if an employer provides disability insurance benefits, the plan distributing these benefits must treat all temporarily disabled employees equally, including employees who are disabled by pregnancy. This means that any disability insurance benefits provided must include pregnancy benefits. These benefits must cover the medical expenses relating to complications after childbirth and must provide for medically necessary abortions and complications which arise from elective abortions.

Employers who provide leave for disability must provide similar disability leave for pregnancy. If child care leave is granted to females, similar provisions must be made for males. However, disability leave for pregnancy is related to the physical disability of the female, and employers do not have to provide similar benefits to male employees.

When benefits are provided to an employee's family members, a spouse's pregnancy must be covered at the same level as other health benefits provided to the employee's family members.

In January 1993, the U.S. Congress passed and the President signed into law a new family leave act, which is expected to alter dramatically the rights of working parents-to-be.

RACIAL DISCRIMINATION

Title VII prohibits discrimination by employers on the basis of race as well as sex. There is also another federal law, 42 U.S.C. § 1981, that provides protection against racial discrimination by employers and offers some advantages to a Title VII racial discrimination suit. A person claiming racial discrimination under 42 U.S.C. § 1981 can bring a lawsuit directly without going to the EEOC first and may be able to collect more damages than under Title VII. There is also no restriction on the number of employees an employer must have to be liable under § 1981 as there is under Title VII. You can bring a § 1981 suit ***only*** for intentional racial discrimination while under Title VII either intentional discrmination or a disparate impact on a person because of race is enough for a violation.

AGE DISCRIMINATION

29 U.S.C. § 621, et seq.

The Age Discrimination in Employment Act makes it unlawful for an employer, labor union, or employment agency to discriminate on the basis of age with respect to hiring, firing, wages, and other matters of employment. The Act protects persons who are at least 40 years of age. There is no upper age limit for protection. All state and local public employers and private employers with more than 20 employees are subject to the law.

Some exceptions to the Age Discrimination in Employment Act include:

- where age is a bona fide occupational qualification (see definition under Sex Discrimination and Title VII);
- where a person has been fired for good cause;
- where the person is a high executive or policy maker who has reached the age of 65 and has the requisite financial standing;
- until December 31, 1993, where the person is a tenured professor at a university and has reached the age of 70; after this date these professors ***are*** protected against compulsory retirement unless Congress elects to extend the exemption.

Charges of age discrimination must be made to the EEOC within 180 days of the alleged discriminatory action. As with Title VII and Equal Pay claims, a person may not take the case to court without first filing a charge with the EEOC.

DISCRIMINATION AGAINST THE HANDICAPPED

The Rehabilitation Act of 1973

29 U.S.C. § 790: 42 U.S.C. § 12101

The Rehabilitation Act of 1973, amended in 1974, protects handicapped employees and job applicants of most federal government contractors from discrimination. The law prohibits federal contractors and subcontractors from discriminating against the mentally or physically handicapped. The employer must undertake affirmative action to provide employment opportunities for the handicapped. The Office of Federal Contract Compliance of the Department of Labor is responsible for enforcing this Act. Contact the office if you think that you have been discriminated against on the basis of a handicap.

Americans with Disabilities Act of 1990 (ADA)

The Americans with Disabilities Act of 1990 (ADA) provides that employers of 25 or more persons may not discriminate against a qualified individual because of the disability of that individual. [On July

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26, 1994, this Act will also apply to employers with 15 or more employees.] The disability may be a mental or physical impairment or disease that substantially limits a major life activity. An employer also may not discriminate against persons who are in the process of or have completed rehabilitation for alcohol or drug use and who are no longer engaging in the use of such substances.

The Act requires employers to make reasonable accommodations to the disabled person's limitations. Some of the required accommodations include, but are not limited to, making the existing facilities accessible, restructuring work schedules, and providing appropriate training materials or interpreters. Employers also have the opportunity to prove that such accommodations create an undue hardship, meaning significant difficulty or expense.

Civil Rights Act of 1991

The Civil Rights Act of 1991 provides for compensatory and punitive damages when an employer intentionally engages in unlawful discrimination against the disabled under either the Rehabilitation Act or the Americans with Disabilities Act.

There are many details and exceptions within this Act. While persons with disabilities have much greater protection because of this act, this is still an unsettled area of law.

MINIMUM WAGE AND OVERTIME

29 U.S.C. §206: N.C.G.S. §95-25.3; N.C.G.S. §95-25.3A

State and Federal laws establish minimum wages and overtime pay. There are numerous exceptions to these provisions. When an employer engages in interstate commerce, that employer generally falls under the federal minimum wage laws. Employers covered by the federal minimum wage laws must pay $4.25 per hour. The overtime provisions require an employer to pay time and a half for every hour over 40 that an employee works in one work week. North Carolina minimum wage and overtime laws reflect the federal provisions. North Carolina minimum wage is currently $4.25 per hour, and overtime pay is time and a half for every hour over 40 that an employee works in one work week. Special provisions have been made in North Carolina for a training wage for qualified employees, which shall be not less than 85% of the minimum wage.

UNEMPLOYMENT COMPENSATION

N.C.G.S. § 97

Unemployment compensation is temporary financial assistance paid by the State to workers who meet certain requirements and have

become unemployed through no "fault" of their own. If you were fired for a good cause, or if you quit, you cannot collect unemployment. Generally, to be eligible for benefits you must:

- have worked on a job for a certain length of time (domestic workers who earned more than $1,000.00 in the prior year and certain farm workers are not eligible);
- be able to work;
- be available to work;
- register to work at your local Employment Security Commission Office and continue to report to that office; and
- be actively seeking work.

If you are eligible, the duration and amount of your payments depend on the length of your prior employment and level of earnings.

Pregnant women are eligible for unemployment compensation during the time they are physically able to work. You may not be denied eligibility simply because you are pregnant, as long as you are physically capable of working.

See your local unemployment office for information on how to obtain benefits.

WORKER'S COMPENSATION

N.C.G.S. § 97

If you are injured as a result of an accident on the job or are suffering from an occupational disease caused by the type of work you perform, you are entitled to receive a money payment under the North Carolina Worker's Compensation Act.

The injury must have been caused by an accident. The injury or disease must have arisen out of the employment and occurred during the course of employment.

If you think that you have such an injury or occupational disease, you should give your employer written notice within 30 days. The employer submits the claim to the North Carolina Industrial Commission for approval. If the employer and the employee fail to agree on the issue of compensation, the Commission will hold a hearing to determine the extent of the injury and the amount to be received by the employee. The decision of the North Carolina Industrial Commission may be further appealed to the North Carolina Court of Appeals.

All public employees are required to be covered under the Worker's Compensation Act. Private employers with at least four employees are required to provide coverage.

The injured worker may receive money to cover actual medical

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expenses and lost wages and for permanent disabilities. In case of the employee's death, the family survivors may receive death benefits. These amounts are all fixed by the act.

The North Carolina worker's compensation law generally bars civil negligence suits against the employer, which means that you cannot sue for damages for your employer's negligence if worker's compensation is available. However, a recent North Carolina Supreme Court case has held that when an employer engages in conduct that it knows is substantially certain to cause serious injury or death to employees, a harmed employee may pursue a civil action for damages against the employer. This is because such conduct rises to the level of an intentional tort so that the civil action is not barred by Worker's Compensation. While an employee may pursue both Worker's Compensation and civil remedies in such a situation, the employee may only recover from one of the two means. *(Woodson v. Rowland, 329 N.C. 330, 1991.)*

HEALTH

BIRTH CONTROL

Birth control devices, designed to prevent pregnancy, are legal and readily available in North Carolina. Birth control pills, intrauterine devices (IUDs) and diaphragms must be prescribed by a licensed doctor. Other less effective methods are sold legally without a prescription. Your local health department may be able to provide you with birth control devices if you cannot afford to see a private doctor. You may not have to pay for these if your income is low. You should call your local health department for more details on how to obtain birth control.

ABORTION

If you become pregnant and do not want to have a child, you may terminate the pregnancy by having an abortion. The abortion removes the unborn fetus from the uterus. Abortions are legal if they are performed by a licensed doctor inside a clinic or hospital that has been certified by the North Carolina Department of Human Resources.

In 1973, the Supreme Court ruled that a woman has an unqualified constitutional right to an abortion up to the end of the first three months of pregnancy. After the first three months, however, a state could regulate where and by whom abortions could be performed to protect the mother's health. In the interest of preserving the life of the unborn child, in the third trimester of pregnancy a state could ban abortions except when the abortion was necessary to preserve the life or health of the mother. *(Roe v. Wade, 410 U.S. 113, 1973.)*

The Supreme Court recently held that although a woman continues to have a constitutional right to an abortion, states may require consent procedures or waiting periods for all abortions, including those performed in the first trimester, as long as the limitations do not constitute an "undue burden" on the woman. The future application of this decision is uncertain. *(Planned Parenthood of S.E. Penn. v. Casey, 112 S.Ct. 2791, 1992.)*

N.C.G.S. § 14-45.1

Laws regulating abortions are different in every state. In North Carolina, the following laws apply:

- During the first 20 weeks, an abortion is legal for any reason.
- After the first 20 weeks, a woman may obtain an abortion only if carrying the pregnancy to term would threaten her life or gravely impair her health.

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- During the first 20 weeks, the abortion may be performed in a hospital or certified abortion clinic. After the 20th week, the abortion must be performed in a hospital licensed by the N.C. Department of Human Resources.
- An abortion that violates these requirements is a felony, punishable by imprisonment of one to ten years and/or a fine.

If you need financial aid to afford an abortion, funds may be available through the Social Services Department in your area, regardless of your age or marital status. The Social Services Department will assist you in determining if you are eligible to receive state funds. Recently, state funding for abortion has been limited to those cases in which the woman is a victim of rape or incest, the health of the woman will be impaired by pregnancy or there is a significant chance that the baby will suffer from birth defects. If this is the case, the Social Services Department will help you obtain an abortion by first sending you to a clinic or hospital with which the Department has a contract and then by paying your bill. No financial aid is provided directly to you and you cannot receive partial aid. Finally, your local Social Services Department will explore alternatives to abortion with you and explain the medical risks of child birth or abortion. Your privacy is protected at all times.

STERILIZATION

Sterilization is a medical operation that makes a person (male or female) permanently unable to have children. **Voluntary** sterilizations are legal in North Carolina. But if you are not mentally ill or mentally retarded, no one can force you to have this operation without your consent. If you are over 18 years old or younger than 18 and legally married, you alone can decide if you want to be sterilized. If you are married, you do not have to get your husband's permission before having the operation. Prior to the operation, you must make a written request to a doctor. Before or at the time of this request, the doctor should explain the consequences of the operation so that you understand them fully. The operation must be performed in a surgical facility or hospital that has been approved by the Department of Human Resources.

N.C.G.S. § 90-271

If you are under 18 years old and not married, you may be sterilized if you request the operation in writing and your parent or guardian makes a formal request to the juvenile court in the county where you live. The juvenile court then decides if the operation is in your best interest. If the court approves the operation, it will formally authorize the doctor to perform it.

N.C.G.S. § 90-272

North Carolina also has a procedure for involuntary sterilization of mentally ill or mentally retarded persons. The law was enacted to prevent the birth of a child to parents who would be unable to care for it and to prevent the birth of a child likely to have serious physical, mental, or nervous diseases or deficiencies.

N.C.G.S. § 35-36 to 35-50

To obtain the sterilization, the parent or guardian of the mentally ill or retarded person, the director of a state institution where the person is institutionalized, or the director of social services of the county in which the person lives must first make a formal request for sterilization to the district court of the county where the mentally ill or retarded person is institutionalized or lives. The request must be presented to the mentally ill or retarded individual and to the guardian of the individual 20 days before a hearing in court. The person has the right to a court-appointed attorney and may appeal the decision of the district court to the superior court and up through the appellate system.

The state or state institution pays all costs for operations authorized under this section for residents or patients in state institutions.

N.C.G.S. § 35-43

Should any interested party request a hearing, one will be held in the district court before a judge without a jury. If no objection is made by an interested party, the judge may render judgment without witnesses. If the judge finds: 1) existence of physical, mental, or nervous disease/deficiency, **which isn't likely to improve**, so that the person couldn't care for a child/children; ***or*** 2) the person is likely to have a child with serious physical, mental or nervous diseases or deficiencies, he shall authorize the operation.

N.C.G.S. § 35-49 (1992)

In life-threatening or emergency situations where sterilization is medically necessary, a petition could be granted absent the factors listed above. *(In re Truesdale, 313 NC 421, 329 SE2d 630, 1985.)*

MINORS

A minor is any person under 18 years old.

MEDICAL TREATMENT

There are four occasions when a physician may treat a minor
N.C.G.S. § 90-21.1 without a parent's or a guardian's permission:

- where the parents or guardian cannot be located during the time within which the minor needs to receive the treatment
- where the identity of the child is unknown, or where necessity for immediate treatment is so obvious that any effort to secure the parent's or guardian's approval would delay treatment and endanger the minor's life
- where any effort to contact the parents or guardian would result in a delay that would worsen seriously the minor's physical condition
- where the parents or guardian refuse to consent to a procedure and the necessity for immediate treatment is so obvious that the delay to get a court order would endanger the minor's life or seriously worsen her physical condition.

Physicians who provide health services to a minor under the terms
N.C.G.S. § 90-21.4 listed above will not be held liable in any action for providing such services without having obtained permission from the minor's parent or guardian.

Minors may give consent to a licensed North Carolina physician for
N.C.G.S. § 90-21.5 the following: prevention, diagnosis and treatment of venereal diseases (N.C.G.S. § 130A-135 lists other diseases falling under this category); pregnancy; abuse of controlled substances or alcohol; and emotional disturbance.

An emancipated minor may consent to any medical, dental and
N.C.G.S. health services for herself or for her child.
§ 90-21.5(b)

For medical or psychiatric treatment under N.C.G.S. § 91-21.5,
N.C.G.S. § 91-21.4 the physician doesn't need to contact the parent or guardian without permission of the minor unless the physician feels it necessary for the life or health of the minor. If a parent or guardian contacts the physician about treatment or services provided to a minor, the physician may give the information.

MENTAL HEALTH ADMISSIONS OF MINORS

N.C.G.S. A minor may be admitted to a mental health facility if the minor is
§ 122C-221 mentally ill or a substance abuser and in need of treatment. In applying

for admission to a facility, in consenting to medical treatment when consent is required, and in any legal procedure, the person legally responsible for the minor shall act for the minor. If a minor turns 18 years old while in treatment under this part, additional treatment is authorized only by written consent of the minor.

N.C.G.S. § 122C-223

In an emergency situation in which the legally responsible person does not apply for admission on behalf of the minor, a minor who is mentally ill or a substance abuser may be admitted for treatment to a 24-hour facility on his or her own written application.

N.C.G.S. § 122C-223(b)

Within 24 hours, the facility should use reasonable means to contact the person legally responsible for the minor. If the person cannot be reached within 72 hours of admission, juvenile protective service proceedings will be initiated.

N.C.G.S. § 122C-224

If the minor is admitted to a 24-hour facility where she will be subjected to restrictions on freedom of movement, a hearing must be held within 15 days in the county in which the minor is located.

N.C.G.S. § 122C-224(b)

The minor, and the legally responsible adult if present, should be provided with all information related to length of admission and discharge procedures. Also, after a written request for discharge, the facility may continue to hold the minor up to 72 additional hours so that the facility may apply for a petition for involuntary commitment.

N.C.G.S. § 122C-224.1

Within 48 hours of notice that a minor has been admitted to a facility, the court will appoint an attorney for the minor. All minors are considered indigent such that the attorney is provided without charge, unless a legally responsible adult is available to pay.

N.C.G.S. § 122C-224.2

Before the minor's hearing, the appointed attorney will meet with the minor. The attorney should give the minor all of the information about the hearing, including discussing what the minor is expected to do.

N.C.G.S. § 122C-224.3

A hearing for a minor may not be held in a courtroom but may be held in the Judge's Chambers or in the facility where minor is located. The minor has a right to be present at the hearing unless she does not want to be and tells the judge. The minor has the right and is expected to testify on his or her behalf unless the judge is told otherwise (through the minor's attorney) .

N.C.G.S. § 122C-224.3(f)

For an admission to be continued beyond the hearing, the minor must be found to be (1)mentally ill or a substance abuser AND (2) in need of further treatment. The judge must try to find lesser treatment than to keep the minor as an inpatient.

If the minor is kept in the facility, hearings will be held at different times to decide whether the minor needs to stay in the facility or whether the minor should be released.

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EMANCIPATION

Any juvenile 16 years old or older who has lived in the same county in North Carolina for 6 months may petition the court for emancipation.

N.C.G.S. § 7A-717(1992)

The petition must include:

N.C.G.S. § 7A-718

- certified copy of your birth certificate
- name and last known address of the parent, guardian, or custodian
- your address and length of residence at the address
- reasons for requesting emancipation
- your plans for meeting your needs and living expenses which may include a statement of employment and wages earned as verified by your employer

The petition will be served on the parent or guardian. Then a judge without a jury will listen to you and to your parent or guardian (if they would like to speak) and then make the decision. You must show it is in your best interest to be emancipated. If the judge finds that reasonable cause exists, the judge may order a mental or physical evaluation. She may also order an investigation of any of your claims.

N.C.G.S. § 7A-719, § 7A-720

The judge uses 7 factors to make the decision:

N.C.G.S. § 7A-721

- parental need for your earnings
- your ability to function as an adult
- your employment status and stability of living arrangements
- extent of family discord
- rejection of parental supervision or support
- quality of parental supervision or support

The judge then decides if 4 final criteria are met:

N.C.G.S. § 7A-724

- all parties have had an opportunity to be heard
- you have shown a proper and lawful plan to provide for your needs and living expenses
- you have knowingly sought emancipation and understand what's going to happen and what emancipation means
- emancipation is in your best interest

If 1-4 are not met, the judge will dismiss the proceeding.

Married juveniles are considered emancipated (without going through this procedure).

N.C.G.S. § 7A-726

Emancipation gives the same rights as adults have: the right to contract, to convey property, to sue and be sued, as well to transact other business as though an adult (including, under § 90-21.5(b), the right to consent to any medical treatment, dental and health services for herself or for her child).

Listed below are **some** of the available public assistance programs. The programs are complicated and the guidelines change often. The appropriate agency can help you file an application and answer your questions. The Department of Social Services (DSS) normally assigns a social worker to help you to apply for all of the programs for which you are eligible.

ANYONE HAS A RIGHT TO APPLY FOR ANY PROGRAM. Your applications *must* be taken the day you visit the agency.

It is a crime to withhold information intentionally or to give false facts in order to obtain public assistance. You may be fined or imprisoned or both for such deception.

You have a right to appeal any decision about benefits under any public program.

See your local Legal Services office for help with problems in regard to any program.

Aid to Families with Dependent Children (AFDC)*

AFDC is a monthly money payment for needy, dependent children and may include money for a related adult who provides a home for such children. To receive AFDC, a family must have income and resources below specified levels.

*Supplemental Security Income** (SSI)*

SSI is a monthly payment to aged, blind or disabled persons who are in need. Persons who receive SSI may also receive Social Security, Medicaid, food stamps and other social services.

*Food Stamps**

Food stamps are coupons used like money to buy food. Households which receive AFDC or SSI are generally eligible for food stamps. Other households may receive food stamps if their incomes and resources are not too high.

Special Supplemental Food Program for Women, Infants and Children+ (WIC)

WIC provides extra food to pregnant or nursing women and to children under five years who have poor diets or slow growth (i.e. underweight, anemia, premature birth).

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Social Security **

Social Security provides monthly payments to a former wage earner and/or her or his dependent if the wage earner retires, becomes disabled or dies.

Medicare **

Medicare is health insurance program to help people pay their medical bills. You do not have to be poor to receive Medicare benefits. You are eligible if you are 65 or older and qualify for Social Security or if you are disabled and have been receiving Social Security benefits for two consecutive years.

*Medical Assistance or Medicaid**

Medicaid is a program which helps needy people pay their medical bills. To qualify for Medicaid, you must be blind, over 65, disabled, a member of a needy family with children, or a needy pregnant woman.

*EPSDT**

EPSDT is a special Medicaid program that provides health care for needy children under 21 whose families cannot pay for regular care. EPSDT provides dental, eye and hearing tests and treatments as well as transportation for the treatments.

Low Rent Public Housing++

Public housing projects are available in many areas to people with low incomes.

Housing Assistance Payment Program++ (HAPP)

HAPP is a rent supplement to low income families and displaced, elderly and disabled persons. This program is also known as the **Section 8** program.

Vocational Rehabilitation ~ (VR)

VR provides help to persons who are of working age and who have a job handicap (i.e. mentally ill, retarded, deaf, drug abusers, alcoholics, juvenile offenders, etc.).

Child Abuse and Neglect (Protective Services for Children and Adults)*

If you suspect a child is being abused or neglected, you may call either your local DSS, the sheriff or the police. (You may also call if you suspect that an adult is being abused and neglected).

** Contact your local Department of Social Services.* *** Contact your local Social Security Office.*
+ Contact your local Health Department. *++Contact your local Housing Authority.*
~ Contact your local Vocational Rehabilitation Office.

CRIMINAL LAWS

Criminal laws define crimes—offenses against society—and set out punishments. They differ from civil laws, which have to do with the rights of one citizen against another, because the state, rather than an individual, brings the action against the wrongdoer. The state is represented by lawyers called District Attorneys (D.A.'s). The person accused of committing the crime is the defendant.

If the defendant admits his or her guilt, he or she is punished and there is no trial. If the defendant denies committing the crime, the D.A. prosecutes the case which then goes to trial. Often, the victim of the crime acts as the complaining witness and must go to court to testify against the defendant. If the defendant is found guilty, he or she is punished by a warning, probation, a fine and/or a prison sentence. The more serious crimes are called felonies; less serious crimes are called misdemeanors.

RAPE AND CRIMINAL SEXUAL OFFENSES

N.C.G.S. § 14-27

A North Carolina law concerning forcible sex crimes went into effect in January 1980. This law forbids sexual assaults, including rape, against women and men. A sexual assault is any kind of sex act or touching done to a person who does not consent. Under this law, rape is defined as forced vaginal intercourse. (Though physically incapable of committing the physical act of rape against another woman, a woman may be convicted of rape if she assists a male rapist. *State v. Overman, 269 N.C. 453, 1967.)*

Criminal sex offenses, such as those involving forced oral and anal sex and any penetration of the vaginal or anal opening by any object other than a penis, committed by either males or females against either males or females are also prohibited under this law.

Thus, under these laws, if someone forces you to have vaginal intercourse or assists in forcing you to have vaginal intercourse, that person can be charged with rape. If a man or woman forces you to have oral or anal sex or forces you to engage in a sex act which involves vaginal or anal penetration by some other object, that person can be charged with a criminal sex offense.

If you are raped or otherwise sexually assaulted, you may get help by calling a local rape crisis center hotline, which will be listed in your phone book if available. You should also report the attack to the police as soon as possible.

Continued

Both rape and criminal sexual offenses are divided into degrees. Conviction of a first degree crime results in life imprisonment. Second degree crimes are punished by imprisonment of up to 40 years. The laws governing rape and other sexual crimes are discussed in detail below.

First Degree Rape or Sexual Offense

First degree rape requires vaginal intercourse. A first degree sexual offense requires a sex act. In addition, first degree rape and a first degree sexual offense require either:

N.C.G.S. § 14-27.2; § 14-27.4

(1) that the person assaulted be under age 13 and that the defendant be at least four years older than the person assaulted (the defendant may be 12 years old or older but must be a least four years older than the person assaulted), ***or***

(2) force against the will of the person assaulted and one of the following:

a. use of a dangerous weapon (gun or knife)

b. serious injury to the person assaulted

c. the person committing the offense is assisted by one or more persons

Second Degree Rape or Sexual Offense

A second degree rape requires vaginal intercourse. A second degree sexual offense requires a sex act. In addition, second degree rape or a second degree sexual offense requires either:

N.C.G.S. § 14-27.3; § 14-27.5

(1) force against the will of the person assaulted; ***or***

(2) the person assaulted is mentally or physically handicapped and the defendant knows of such handicap.

N.C.G.S. § 14-27.6 It is also a felony to ***attempt*** to commit a rape or sexual offense.

N.C.G.S. § 14-27.7 If a person has a parental or authoritarian role in relation to a child and engages in sexual conduct with that child, that person has committed a felony even if the child agrees to the sexual conduct.

In North Carolina, a husband usually cannot be charged with rape or other sexual offense against his wife. However, the husband ***can*** be charged ***if***:

N.C.G.S. § 14-27.8

- the husband and wife are living separate and apart (written separation agreement or court order not required under statute as amended in 1987. *(State v. Getward, 89 N.C. App. 26, 1988.)*;
- the husband helps another man rape his wife; ***or***
- the husband helps another man or woman sexually assault his wife. *(State v. Martin, 17 N.C. App. 317, 1973.)*

At a rape or sex offense trial, the Rape Shield law protects the person assaulted from improper questions by the defendant's attorney regarding her sexual conduct or behavior other than that related to the charged incident. However, such questions and other evidence of the assaulted person's other sexual conduct or behavior ***may*** be allowed if the behavior was with the defendant, was unique behavior very similar to the the defendant's version of the incident in question (so as to show consent to the charged acts), is evidence used to support expert psychological testimony that the assaulted person "made up" or fantasized the charged assault ***or*** is evidence of specific acts used to show that the defendant did not commit the charged acts. *(North Carolina Rule of Evidence 412, Chapter 8C.)*

NON-FORCIBLE SEX CRIMES

Not all sexual crimes are violent or non-consensual. The following are nonviolent sexual acts that are against the law in North Carolina.

Adultery and Fornication

Adultery is sexual intercourse by a married person with any person other than his or her spouse. Fornication is sexual intercourse between unmarried persons. These crimes are misdemeanors. Punishment may be a fine of up to $500 or six months imprisonment, or both.

N.C.G.S. § 14-184

A single act of forbidden intercourse is not considered fornication or adultery under the law since the statute implies habitual intercourse (a pattern or habit of such activity). However, such activity for a period of two weeks has been held sufficient to show the violation. *(State v. Kleiman, 241 N.C. 277, 1955.)*

Adultery and fornication are rarely prosecuted because they are difficult to prove and are nonviolent. Adultery is more often an issue in alimony actions. (*SEE* Divorce section.)

Bigamy

Bigamy is defined as being married to more than one person at the same time. Bigamy is a felony. Punishment may be a fine or imprisonment for up to ten years, or both. Bigamy does not exist if either husband or wife is continually absent for seven years and not known to have been living ***or*** if the parties are lawfully divorced ***or*** if the former marriage is declared void by a court.

N.C.G.S. § 14-183

Persons are rarely prosecuted for bigamy. As with adultery and fornication, bigamy is more often an issue in divorce cases.

Continued

Crimes Against Nature

N.C.G.S. § 14-177

In North Carolina, it is against the law to have anal or oral sex with persons or animals. These acts are called sodomy. Two adults who agree to this kind of sexual activity are rarely prosecuted. Most often, charges under this law are made if a person forces someone else to perform oral sex, or if someone has oral sex with a child. Conviction under the sodomy law may lead to imprisonment for up to ten years or a fine, or both.

Incest

N.C.G.S. § 14-178; § 14-179

Incest is sexual intercourse between close relatives. If the persons involved are grandparent and grandchild, parent and child, stepparent and stepchild, legally adopted child and parent, brother and sister, or step-brother and stepsister, the punishment is up to fifteen years imprisonment or a fine, or both. Incest between uncle and niece or aunt and nephew are punishable by a two-year prison sentence or a fine, or both. Hospitals and other similar institutions are required to report suspected incest cases to the county Department of Social Services. The Department of Social Services investigates and reports cases to the District Attorneys.

Prostitution

N.C.G.S. § 14-203; § 14-204; § 14-207; § 14-208

Prostitution is offering or receiving the body for sexual intercourse in return for money or offering or receiving the body for indiscriminate sexual intercourse without payment of money. Prostitution is also defined as keeping a place (house, building, etc.) for promoting such sexual intercourse. Prostitution is unlawful for both men and women in North Carolina. The prostitute, client and any "middle person" (e.g. person soliciting or arranging the activity) may be prosecuted. First degree prostitution occurs if there are two or more violations within a year and may be punished by a fine, or imprisonment or by commitment to a reformatory institution. In certain large cities, first degree prosecution can result in imprisonment not less than 60 days nor more than two years and a fine. Second degree prostitution is punishable by a fine or imprisonment at the court's discretion.

CRIMES AGAINST FAMILY MEMBERS

Child Abuse

It is against the law to neglect or hurt your child. Child abuse may be either a felony or a misdemeanor. Child abuse may also result in loss of custody or loss of parental rights. (*SEE* Domestic Violence section for other protections for minor children).

Felony Child Abuse

A parent or other person providing care to a child under 16 years of age is guilty of a Class H felony if that person:

N.C.G.S. § 14-318.4

(1) intentionally inflicts any serious physical injury on the child,

(2) commits an assault on the child which results in a serious physical injury,

(3) commits, permits, or encourages any act of prostitution with or by a juvenile, ***or***

(4) commits or allows any sexual act upon a juvenile.

Felony child abuse is punishable by imprisonment up to 10 years and/or a fine.

It is not necessary for conviction under this law that the adult charged with the crime have intended serious injury; it is only necessary that the adult intended to commit an injury that proved later to be serious. *(State v. Campbell, 316 N.C. 168, 1986.)*

Misdemeanor Child Abuse

Child abuse which causes a nonserious injury is a misdemeanor. A parent or person providing care or supervision to a child less than 16 years of age is guilty of misdemeanor child abuse if that person:

(1) inflicts a physical injury on the child ***or***

(2) allows a physical injury to be inflicted on the child ***or***

N.C.G.S. § 14-318.2

(3) creates or allows to be created a substantial risk of physical injury to the child.

If the injury results accidentally (from unintentional acts), no violation exists.

Keeping silent while a child is being abused may also be considered or prosecuted as aiding and abetting an assault on a child. *(State v. Walden, 306 N.C. 466, 982.)*

Child Abuse Reporting Requirements

North Carolina has a child abuse reporting law which requires persons who suspect that a child is being abused or neglected to contact the Department of Social Services (DSS). DSS is required to investigate abuse reports within 24 hours and neglect reports within 72 hours. Those who report abuse or neglect in good faith or cooperate with the investigation in good faith are immune from civil or criminal liability (cannot be sued or prosecuted) for making the report.

N.C.G.S. § 7A-543, § 7A-544, § 7A-550

Continued

ABANDONMENT AND FAILURE TO SUPPORT SPOUSE AND CHILDREN

Felony Abandonment or Nonsupport of Children

N.C.G.S. § 14-322.1

It is a Class I felony for any man or women, without just cause or provocation, willfully to abandon his or her child or children for six months and willfully fail or refuse to provide adequate means of support for his or her children during the six month period and attempt to hide from his or her children with the intent of escaping his or her lawful obligation to support his or her children. This felony is punishable by 5 years imprisonment and/or a fine.

Misdemeanor Abandonment or Nonsupport of Spouse or Children

N.C.G.S. § 14-322

A supporting spouse is guilty of a misdemeanor if he or she willfully abandons a ***dependent*** spouse without providing adequate support or if he or she neglects to provide adequate support while living with the dependent spouse. It is also a misdemeanor if a parent neglects or refuses to provide adequate support for his or her children (natural or adopted) up to the age of 18. For the first offense, the punishment is a fine of up to $500 and/or imprisonment up to six months. Repeat offenses may be punishable by a fine and/or imprisonment of up to two years.

If a husband and wife consent to a separation, there is no abandonment of the dependent spouse under the law. *(State v. Smith, 164 N.C. 475, 1913.)*

A spouse may use the other spouse's adultery as a defense to a charge of abandonment and nonsupport. *(State v. Johnson, 194 N.C. 378, 1927.)*

Nonsupport of Illegitimate Children

N.C.G.S. § 49-2; § 49-7; § 49-8

Deliberate nonsupport of illegitimate children by either parent is also a crime. It is a misdemeanor punishable by up to six months imprisonment and a requirement to make support payments. Instead of requiring a fine or prison term, the court has the authority to order that a man pay support to his wife and/or children if he has been convicted of nonsupport.

DOMESTIC VIOLENCE

N.C.G.S. § 50B

In 1979, North Carolina passed the Domestic Violence Act to deal with problems of serious violence in the home. This law defines domestic violence as attempting to cause bodily injury, intentionally

causing bodily injury *or* placing the person threatened in fear of immediate serious injury by threat of force when such acts or threats occur between past or present spouses or persons who are or were living together as if married. A 1985 amendment makes the Domestic Violence Act applicable to violence against minor children as well as violence against spouses.

A person injured or threatened by domestic violence may file a civil action against the violent spouse and may request emergency relief from the court if he or she believes that there is a danger of serious or immediate injury to herself or himself or a minor child. You do not need an attorney to file such a charge or request. Forms for this purpose are available from the Clerk of Superior Court. The court may enter protective orders, including orders to stop the violence or harrassment, to exclude the assaulting spouse from the residence, and to deal with custody and support issues. These court orders may also help the person harmed by domestic violence to return safely to the home. If the assaulting spouse violates this court order, he or she may be arrested and held in contempt of court.

The Domestic Violence Act authorizes the police to arrest a person who violates a protective order. The Act also requires police to help threatened spouses by providing transportation and information about housing and services available during the time they are having problems. However, police are not required to respond to multiple complaints within a 48 hour period when they have reason to believe immediate assistance is not needed.

Assault Charges

N.C.G.S. § 14-33

Another way to stop temporarily domestic abuse is to take out a warrant for assault against the assaulting spouse. This is done at the magistrate's office. Assault is an intentional attempt by force or violence to injure another which causes a reasonable fear of immediate bodily harm. There are many kinds of assault. If a male at least 18 years old assaults a female, if a child under 12 is assaulted, if a deadly weapon is used, or if serious injury is attempted or inflicted, the person committing the assault may be fined and/or imprisoned for up to two years. Any other assault is a misdemeanor simple assault and is punishable by a $50 fine and/or up to 30 days in jail.

If a deadly weapon is used with intent to kill and serious injury results, the person committing the assault may be charged with a Class F felony. A Class F felony is punishable by up to 20 years imprisonment

Continued

and/or a fine. If there is no intent to kill but serious injury results from the use of a deadly weapon, a Class H felony has been committed. A Class H felony is also committed if a deadly weapon is used with intent to kill and no serious injury results. A Class H felony is punishable by up to 10 years imprisonment and/or a fine.

The marital relationship does not give a spouse license to commit assault. Thus, a charge of assault can be filed against your spouse. *(State v. Sherron, 4 N.C. App. 386, 1969.)*

Verbal Assault

N.C.G.S. § 14-277.1

Verbal assault is also a crime in North Carolina. A verbal assault is a threat to injure physically a person or his or her property. The threat must be communicated in some way to the person threatened and made in a manner and under circumstances which would cause a reasonable person to believe the threat is likely to be carried out.

There is no requirement that the verbal threat actually be carried out to count as a verbal assault. *(State v. Roberson, 37 N.C. App. 714, 1978.)*

Verbal assault is a misdemeanor punishable by a fine of not more than $500 and/or imprisonment of not more than six months.

KIDNAPPING

N.C.G.S. § 14-39

Under North Carolina law, any person who unlawfully removes, restrains or confines a person without that person's consent (or consent of a parent or guardian if the kidnapped person is under 16) to get a money ransom, to use the person as a shield, to harm the person seriously, to carry out another felony or to assist in flight from a felony is guilty of kidnapping. If the kidnapped person is seriously injured, sexually assaulted or is not released in a safe place, the crime is punishable by up to 40 years imprisonment and/or a fine. Otherwise, the crime is punishable by up to 30 years imprisonment and/or a fine.

N.C.G.S. § 14-320.1

If a child is under 16 years old and there is a court order concerning custody, anyone (including the removing parent) who, with intent to violate the court order of custody, removes the child from the state of North Carolina or keeps the child outside the state is guilty of a Class J felony punishable by up to 3 years imprisonment and/or a fine.

EDUCATION

Title IX of the Education Amendments of 1972 (known as Title Nine) is a federal law prohibiting sex discrimination and sexual harassment in educational programs and activities receiving federal money. According to *Grove City College v. Bell, 465 U.S. 555 (1984)*, Title IX applies only to programs and activities receiving federal financial aid and not to entire institutions. Title IX covers all levels, from preschool to graduate school. It protects students, professional staff and support staff from intentional sex discrimination and sexual harassment. Title IX does not cover certain religious, military and merchant marine educational institutions, or the YMCA, YWCA, Boy Scouts, Girl Scouts, Campfire Girls, voluntary youth service organizations, and social fraternities and sororities under certain conditions. Title IX takes precedence over any state and local laws regarding education which restrict students, applicants, or employees on the basis of sex. If the programs discussed below receive federal financial aid, the following applies.

ADMISSIONS

During the admissions process, a school cannot give preference to either sex or use a test which has an adverse effect on one sex. A school may, however, be required to make further efforts to recruit one sex to remedy imbalances. A woman cannot be denied admission on the basis of her sex to any vocational education program, graduate or professional school or publicly-supported undergraduate school. A school may not make inquiries regarding the marital status of an applicant for admission, including whether the applicant is "Miss" or "Mrs." People can be barred from private undergraduate schools and public colleges which have traditionally been all men or all women, but the school must meet all other Title IX requirements.

HOUSING

Housing for male and female students may be separate, but the facilities, fees, services, availability, benefits and rules must be comparable. This applies to dormitories and to any community housing listed and approved by the institution.

COURSES AND SERVICES

Schools may not require or refuse participation in a course on the

Continued

basis of sex. For example, courses in physical education, home economics, technical, industrial, and business education and adult education must be open to both men and women, if offered. A school may not cooperate with any organization that discriminates on the basis of sex in providing benefits or services to students.

Health education classes must, in general, not be separated by sex. However, classes in human sexuality may be taught separately.

Physical education classes should be grouped by ability according to performance, not by sex alone, unless students are playing bodily contact sports such as boxing, wrestling, rugby, ice hockey, football, and basketball.

Counseling and guidance services cannot treat students differently on the basis of sex. When a school uses testing or other materials to appraise or counsel students, it cannot use different materials on the basis of sex. If a school uses placement testing that results in classes of one sex, it must then assess its tests, pamphlets, and advising techniques to assure that placement is not the result of discrimination by counselors or bias within the testing materials.

MARITAL OR PARENTAL STATUS

A school cannot, in making decisions for admission or employment, apply any rule concerning the actual or potential marital or parental status of an applicant. Similarly, a school cannot set up any rules which treat women differently from men because they are married or parents.

A school cannot exclude any person because of pregnancy, childbirth, termination of pregnancy, or recovery period from any of the above. If a school has any medical or hospital plan, or a leave policy for students or staff, it must treat pregnancy as any other temporary disability. If the school does not have a leave policy, it must treat pregnancy as a justification for a leave of absence. After the leave, a student must be reinstated to her former status. An employee must be returned to a comparable position without loss of pay or opportunities for promotion.

ATHLETICS

No athletic programs or clubs can exclude one sex or treat the sexes differently. However, schools may have separate teams for male and female students if team members are chosen on the basis of skill or if a bodily contact sport is involved. If there are not separate teams in a noncontact sport, girls must be allowed to try out for the existing

team. However, the school may be required to start a girls' team.

Title IX requires a school to provide equal opportunity in athletics in these areas: equipment, games, travel, coaching, salaries, lockers, medical care, housing, publicity and scholarships. This does not necessarily require that equal amounts of money be spent, except in the area of scholarships, but the money spent will be considered to determine if the school meets Title IX requirements.

EMPLOYMENT ASSISTANCE TO STUDENTS

Schools covered by Title IX may not discriminate against persons who work for them. Sex may not be a factor in recruitment, hiring, firing, promotion, assignments, salaries, or fringe benefits. A school must offer equal opportunities for all jobs and equal pay for male and female students on campus. Further, a school must assure that local employers seeking students for positions do not engage in discriminatory practices.

Title IX coverage of employees has been questioned in the courts recently, but the same rights are secured through Title VII of the Civil Rights Act. (*SEE* the Employment section.)

FINANCIAL AID

A school cannot, on the basis of sex, provide different amounts or types of financial assistance to male and female students. All tests for elibility and approval must be the same, and the school may not cooperate with any organization that discriminates on the basis of sex in awarding financial aid.

ENFORCEMENT

Each school must appoint at least one Title IX coordinator to assure compliance with Title IX and to investigate complaints brought by students and employees. The school must notify all its students and employees of the name, office address and telephone number of the coordinator(s). A school may lose its federal funds if it is not in compliance with the requirements of Title IX.

Individuals or groups who believe they have been discriminated against in violation of Title IX may file a complaint with the Title IX coordinator(s) at the school. For further information regarding filing a Title IX complaint, a person living in North Carolina may write to the Regional Office of Civil Rights, Department of Education, P.O. Box 2048-043010, Atlanta, GA 30301, or may call (404) 331-2954

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for assistance. A complaint must be filed within 180 days after the alleged violation.

ATHLETICS

In Franklin v. Gwinnett County Public Schools, 112 U.S. 1082, the Supreme Court held that all available remedies, including monetary damages, back pay, and injunctive relief, may be awarded under Tile IX.

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